to the heirs free from any claim of the society, legal or equitable.

The Supreme Court of Wisconsin, in a case which aroused much interest (*The State ex rel.* v. *Peter Doyle, Secretary of State*, 40 Wisc. 220), took strong ground in upholding the absolute authority of the state legislature and state tribunals in establishing and enforcing terms and conditions upon foreign corporations, doing business within that state, the legislature having passed an act making it a condition precedent for a foreign insurance company, establishing an agency in that state, that it should stipulate not to remove to the federal court any writs which might be brought against it. The state Supreme Court held the act constitutional, in opposition to the ruling of the United States Circuit Court, and when the latter case went to the U. S. Supreme Court (94 U. S. Rep., 4 Otto 535), that tribunal, following *Paul* v. *Virginia*, 8 Wall. 168, reversed the decree of its circuit court, thus practically affirming the opinion of the state court, and declaring that the insurance company had no constitutional right to do business in that state, and had only the option to conform to the conditions prescribed by the state or retire from its limits.

The United States Supreme Court, in the *Bank of Augusta* v. *Earle*, 13 Peters 519, considered the question of the comity between states, and the rights accruing thereunder, and Chief Justice TANEY delivering the opinion of the court, said, "that whenever the interest or policy of any state required it to restrict the rule of comity, it has but to declare its will, and the legal presumption is at once at an end; that whenever a state sufficiently indicates that contracts which derive their validity from its comity are repugnant to its policy or are considered as injurious to its interests, the presumption in favor of its adoption can no longer be made." This case was approved in *Runyan* v. *Lessee of Cosler*, 14 Peters 122, where it was held, that every power which a corporation exercises in another state, depends for its validity upon the laws of the sovereignty in which it is exercised, and that as the policy of the state of Pennsylvania was, that lands there held by corporations without license from the Commonwealth were subject to forfeiture by the Commonwealth, a foreign corporation acquiring title to lands therein, took them subject to the exercise of such power of forfeiture.

JOSIAH H. BISSELL.

Chicago.

Supreme Court of the United States.

NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY *v.* OLGA DE MALUTA FRALOFF.

It is competent for passenger carriers, by specific regulations, distinctly brought to the knowledge of the passenger, which are reasonable and not inconsistent with any statute or its duties to the public, to protect itself against liability as insurer for baggage exceeding a fixed amount in value, except upon additional compensation proportioned to the risk.

As a condition precedent to any contract for the transportation of baggage, the carrier may require information from the passenger as to its value, and demand extra compensation for any excess beyond that which the passenger may reasonably demand to be transported as baggage under the contract to carry the person.

The carrier may be discharged from liability for the full value of the passenger's baggage, if the latter by any device or artifice, puts off inquiry as to such value,

whereby is imposed upon the carrier responsibility beyond what it is bound to assume in consideration of the ordinary fare charged for the transportation of the person.

In absence of legislation or special regulations by the carrier, or of conduct by the passenger misleading the carrier as to value of baggage, the failure of the passenger, unasked, to disclose the value of his baggage is not, in itself, a fraud upon the carrier.

To the extent that articles carried by a passenger for his personal use when travelling exceed in quantity and value such as are ordinarily or usually carried by passengers of like station and pursuing like journeys, they are not baggage for which the carrier, by general law, is responsible as insurer.

Whether a passenger has carried such an excess of baggage is not a pure question of law for the sole or final determination of the court, but a question of fact for the jury, under proper guidance as to the law of the case, and its determination of the facts—no error of law appearing—is not subject to re-examination in this court.

Section 4281 of Revised Statutes has no reference to the liability of carriers by land for the baggage of passengers.

IN error to the Circuit Court of the United States for the Southern District of New York.

This was an action to recover the value of certain articles of wearing apparel alleged to have been taken from the trunk of the defendant in error, while a passenger upon the cars of the company, and while the trunk was in its charge for transportation as part of her baggage.

There was evidence before the jury tending to establish the following facts:

The defendant in error, a subject of the Czar of Russia, possessing large wealth, and enjoying high social position among her own people, after travelling in Europe, Asia and Africa, spending some time in London and Paris, visited America in 1869, for the double purpose of benefiting her health and seeing this country. She brought with her to the United States six trunks, of ordinary travel-worn appearance, containing a large quantity of wearing apparel, including many elegant, costly dresses, and also rare and valuable laces, which she had been accustomed to wear upon different dresses, when on visits, or frequenting theatres, or attending dinners, balls and receptions. A portion of the laces was made by her ancestors upon their estates in Russia. After remaining some weeks in the city of New York she started upon a journey westward, going first to Albany, and taking with her, among other things, two of the trunks brought to this country. After passing a day or so at Albany, she took passage on the cars of the New York Central and Hudson River Railroad Company for Niagara Falls, deliv-

ering to the authorized agents of the company for transportation as her baggage the two trunks above described, which contained the larger portion of the dress-laces brought with her from Europe. Upon arriving at Niagara Falls she ascertained that one of the trunks, during transportation from Albany to the Falls, had been materially injured, its locks broken, its contents disturbed, and more than two hundred yards of dress-lace abstracted from the trunk in which it had been carefully placed before she left the city of New York. The company declined to pay the sum demanded as the value of the missing laces, and having denied all liability therefor, this action was instituted to recover the damages which the defendant in error claimed to have sustained by reason of the loss of her property.

Upon the first trial of the case, in 1873, the jury being unable to agree, was discharged. A second trial took place in the year 1875. Upon the conclusion of the evidence, the company moved a dismissal of the action, and, at the same time, submitted numerous instructions which it asked to be then given to the jury, among which was one peremptorily directing a verdict in its favor. The court refused to instruct the jury as asked, or otherwise than as shown in its own charge. To the action of the court the company excepted. The jury returned a verdict for plaintiff for $10,000.

The opinion of the court was delivered by

HARLAN, J.—It would extend this opinion to an improper length, and could serve no useful purpose, were we to enter upon a discussion of the various exceptions, unusual in their number, to the action of the court in the admission and exclusion of evidence as well as in refusing to charge the jury as requested by the company. Certain controlling propositions are presented for our consideration, and upon their determination the substantial rights of parties seem to depend. If, in respect to these propositions, no error was committed, the judgment should be affirmed without any reference to points of a minor and merely technical nature, which do not involve the merits of the case, or the just rights of parties.

In behalf of the company it is earnestly claimed that the court erred in not giving a peremptory instruction for a verdict in its behalf. This position, however, is wholly untenable. Had there been no serious controversy about the facts, and had the law upon the undisputed evidence precluded any recovery whatever against

the company, such an instruction would have been proper: 1 Wall. 369; 11 How. 372; 19 Id. 269; 22 Wall. 121. The court could not have given such an instruction in this case without usurping the functions of the jury. This will, however, more clearly appear from what is said in the course of this opinion.

The main contention of the company, upon the trial below, was that good faith required the defendant in error, when delivering her trunks for transportation, to inform its agents of the peculiar character and extraordinary value of the laces in question; and that her failure, in that respect, whether intentional or not, was, in itself, a fraud upon the carrier which prevented any recovery in this action.

The Circuit Court refused, and, in our opinion, rightly, to so instruct the jury. We are not referred to any legislative enactment restricting or limiting the responsibility of passenger carriers, by land, for articles carried as baggage. Nor is it pretended that the plaintiff in error had, at the date of these transactions, established or promulgated any regulation as to the quantity or value of baggage which passengers upon its cars might carry, without extra compensation, under the general contract to carry the person. Further, it is not claimed that any inquiry was made of the defendant in error, either when the trunks were taken into the custody of the carrier, or at any time prior to the alleged loss, as to the quantity or value of their contents. It is undoubtedly competent for a carrier of passengers, by specific regulations, distinctly brought to the knowledge of the passenger, which are reasonable in their character and not inconsistent with any statute or its duties to the public, to protect itself against liability, as insurer, for baggage exceeding a fixed amount in value, except upon additional compensation, proportioned to the risk. And in order that such regulations may be practically effective, and the carrier advised of the full extent of its responsibility, and, consequently, of the degree of precaution necessary upon its part, it may rightfully require, as a condition precedent to any contract for the transportation of baggage, information from the passenger as to its value; and if the value thus disclosed, exceeds that which the passenger may reasonably demand to be transported as baggage without extra compensation, the carrier, at its option, can make such additional charge as the risk fairly justifies. It is also undoubtedly true that the carrier may be discharged from liability for the full value of the passenger's baggage, if the latter, by false statements, or by any devise or artifice, puts off in-

quiry, as to such value, whereby is imposed upon the carrier responsibility beyond what it was bound to assume in consideration of the ordinary fare charged for the transportation of the person. But in the absence of legislation, limiting the responsibility of carriers for the baggage of passengers—in the absence of reasonable regulations upon the subject by the carrier, of which the passenger has knowledge—in the absence of inquiry of the passenger as to the value of the articles carried, under the name of baggage, for his personal use and convenience when travelling—and in the absence of conduct upon the part of the passenger misleading the carrier as to the value of his baggage, the court cannot, as mere matter of law, declare, as it was in effect requested in this case to do, that the mere failure of the passenger, unasked, to disclose the value of his baggage, is a fraud upon the carrier, which defeats all right of recovery. The instructions asked by the company virtually assumed that the general law, governing the rights, duties and responsibilities of passenger carriers, prescribed a definite, fixed limit of value, beyond which the carrier was not liable for baggage, except under a special contract, or upon previous notice as to value. We are not, however, referred to any adjudged case, or to any elementary treatise which sustains that proposition, without qualification. In the very nature of things no such rule could be established by the courts in virtue of any inherent power they possess. The quantity, or kind, or value of the baggage which a passenger may carry under the contract for the transportation of his person, depends upon a variety of circumstances which do not exist in every case. "That which one traveller," says ERLE, C. J., in *Philpot* v. *Northwestern Railway Co.*, 19 C. B. (N. S.), 321, "would consider indispensable, would be deemed superfluous and unnecessary by another. But the general habits and wants of mankind will be taken in the mind of the carrier when he receives a passenger for conveyance."

Some of the cases seem to announce the broad doctrine that, by general law, in the absence of legislation, or special regulations by the carrier, of the character indicated, a passenger may take, without extra compensation, such articles adapted to personal use as his necessities, comfort, convenience, or even gratification may suggest; and that, whatever may be the quantity or value of such articles, the carrier is responsible for all damages or loss to them, from whatever source, unless from the act of God or the public enemy. But that, in our judgment, is not an accurate statement of the law.

Whether articles of wearing apparel, in any particular case, constitute baggage, as that term is understood in the law, for which the carrier is responsible as insurer, depends upon the inquiry whether they are such in quantity and value as passengers under like circumstances ordinarily or usually carry for personal use when travelling. "The implied undertaking," says Mr. Angell, "of the proprietors of stage-coaches, railroads, and steamboats, to carry in safety the baggage of passengers, is not unlimited and cannot be extended beyond ordinary baggage, or such baggage as a traveller usually carries with him for his personal convenience." Angell on Carriers, § 115. In *Hannibal Railroad* v. *Swift*, 12 Wall. 275, this court, speaking through Mr. Justice FIELD, said that the contract to carry the person "only implies an undertaking to transport such a limited quantity of articles as are ordinarily taken by travellers for their personal use and convenience, such quantity depending, of course, upon the station of the party, the object and length of his journey, and many other considerations." To the same effect is a decision of the Queen's Bench, in *Macrow* v. *Great Western Railway Co.*, L. R. 6 Q. B. 121, where Chief Justice COCKBURN announced the true rule to be "that whatever the passenger takes with him for his personal use or convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities, or to the ultimate purpose of the journey, must be considered as personal luggage." 2 Parsons on Contr. 199. To the extent, therefore, that the articles carried by the passenger for his personal use, exceed in quantity and value such as are ordinarily or usually carried by passengers of like station and pursuing like journeys, they are not baggage for which the carrier, by general law, is responsible as insurer. In cases of abuse by the passenger of the privilege which the law gives him, the carrier secures such exemption from responsibility, not, however, because the passenger, uninquired of, failed to disclose the character and value of the articles carried, but because the articles themselves, in excess of the amount usually or ordinarily carried, under like circumstances, would not constitute baggage within the true meaning of the law. The laces in question confessedly constituted a part of the wearing apparel of the defendant in error. They were adapted to, and exclusively designed for, personal use, according to her convenience, comfort, or tastes, during the extended journey upon which she had entered. They

were not merchandise, nor is there any evidence that they were intended for sale or for purposes of business. Whether they were such articles in quantity and value as passengers of like station and under like circumstances ordinarily or usually carry for their personal use, and to subserve their convenience, gratification, or comfort while travelling, was not a pure question of law for the sole or final determination of the court, but a question of fact for the jury, under proper guidance from the court as to the law governing such cases. It was for the jury to say to what extent, if any, the baggage of defendant in error exceeded in quantity and value that which was usually carried without extra compensation, and to disallow any claim for such excess.

Upon examining the carefully guarded instructions given to the jury, we are unable to see that the court below omitted anything essential to a clear comprehension of the issues, or announced any principle or doctrine not in harmony with settled law. After submitting to the jury the disputed question as to whether the laces were, in fact, in the trunk of the defendant in error, when delivered to the company at Albany for transportation to Niagara Falls, the court charged the jury, in substance, that every traveller was entitled to provide for the exigencies of his journey in the way of baggage, was not limited to articles which were absolutely essential, but could carry such as were usually carried by persons travelling, for their comfort, convenience and gratification upon such journeys; that the liability of carriers could not be maintained to the extent of making them responsible for such unusual articles as the exceptional fancies, habits, or idiosyncracies of some particular individual may prompt him to carry; that their responsibility, as insurers, was limited to such articles as it was customary or reasonable for travellers of the same class in general, to take for such journeys as the one which was the subject of inquiry, and did not extend to those which the caprice of a particular traveller might lead that traveller to take; that, if the company delivered to the defendant in error, aside from the laces in question, baggage which had been carried, and which was sufficient for her as reasonable baggage, within the rules laid down, she was not entitled to recover; that if she carried the laces in question for the purpose of having them safely kept and stored by railroad companies and hotel keepers, and not for the purpose of using them, as occasion might require, for her gratification, comfort, or convenience, the company was not

liable; that if *any portion* of the missing articles were reasonable and proper for her to carry, and all was not, they should allow her the value of *that portion.*

Looking at the whole scope and bearing of the charge, and interpreting what was said, as it must necessarily have been understood both by the court and jury, we do not perceive that any error was committed to the prejudice of the company, or of which it can complain. No error of law appearing upon the record, this covrt cannot reverse the judgment because, upon examination of the evidence, we may be of the opinion that the jury should have returned a verdict for a less amount. If the jury acted upon a gross mistake of facts, or were governed by some improper influence or bias, the remedy therefor rested with the court below under its general power to set aside the verdict. But that court finding that the verdict was abundantly sustained by the evidence, and that there was no ground to suppose that the jury had not performed their duty impartially and justly, refused to disturb the verdict, and overruled a motion for new trial. Whether its action, in that particular, was erroneous or not, our power is restricted by the Constitution to the determination of the questions of law arising upon the record. Our authority does not extend to a re-examination of facts which have been tried by the jury under instructions correctly defining the legal rights of parties: *Parsons* v. *Bedford*, 3 Pet. 446; 21 How. 167; *Ins. Co.* v. *Folsom*, 18 Wall. 249.

It is, perhaps, proper to refer to one other point, suggested in the elaborate brief of counsel for the company. Our attention is called to section 4281 of the Revised Statutes, which declares that "if any shipper of platina, gold, gold dust, coins, jewelry, * * trinkets, * * silk in a manufactured or unmanufactured form, whether wrought up or not wrought up with any other material, furs or laces, or any of them, contained in any parcel, package or bundle, shall lade the same as freight or baggage on any vessel, without, at the time of such lading, giving to the master, clerk, agent or owner of such vessel receiving the same, a written notice of the true character and value thereof, and having the same entered on the bill of lading therefor, the master and owner of such vessel shall not be liable as carriers thereof in any form or manner; nor shall any such master or owner be liable for any of such goods beyond the value and according to the character thereof, so notified and entered."

It is sufficient to say that that section has no application whatever to this case. It has reference alone to the liability of carriers by water, who transport goods and merchandise of the kind designated. It has no reference to carriers by land, and does not assume to declare or restrict their liability for the baggage of passengers.

The judgment is affirmed.

FIELD, J.—I dissent from the judgment of the court in this case. I do not think that two hundred and seventy-five yards of lace, claimed by the owner to be worth $75,000, and found by the jury to be of the value of $10,000, can, as a matter of law, be properly considered as baggage of a passenger, for the loss of which the railroad company, in the absence of any special agreement, should be held liable; and I am authorized to state that Mr. Justice MILLER and Mr. Justice STRONG concur in this view.

United States District Court. District of Indiana.

WARFORD v. NOBLE ET AL.

An adjudication of bankruptcy having been held by the courts of Indiana, to have the same effect upon the wife's claim to dower as a judicial sale of the husband's real estate, the federal courts will follow that rule in regard to land in that state.

By the law of Indiana, a wife's inchoate right of dower becomes absolute, upon the judicial sale of her husband's real estate and she is entitled to immediate possession.

But this rule does not apply to land in which the husband has only an equitable title. As to such lands an adjudication of bankruptcy against the husband, passes his title to the assignee free from any claim of the wife.

Bill to quiet title. On exceptions to master's report.

The plaintiff is the assignee of William F. Noble, a bankrupt. Rachael Noble, one of the defendants, is the wife of the bankrupt. Among the assets of the bankrupt that passed to his assignee was a parcel of real estate that had formerly constituted a portion of the common-school lands of the state.

William F. Noble, the bankrupt, held title to it by certificate of purchase from the officer authorized to sell the school lands. He had paid a portion only of the purchase-money, and had received no deed. His only muniment of title was his certificate of purchase. He had been in possession of the land under his purchase for many years before his bankruptcy.

In the course of his administration of the bankrupt's estate, the